IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

Crl.Rev.Pet.No. 4111 of 2006()

CRA.109/2003 of I ADDL. SESSIONS COURT, KOLLAM
CC.483/1999 of JUDL.MAGISTRATE OF FIRST CLASS, PARAVOOR

REVN. PETITIONER: APPELLANT/ACCUSED:

K.D.JOY, S/O.DEVASSI,
KAALAMPARAMBAN HOUSE, KARAYAM PARAMBU DESOM,
KARUKUTTY P.O., ERNAKULAM.

BY ADV. SRI.A.JAYASANKAR
SMT.A.K.PREETHA

RESPONDENTS: RESPONDENTS: COMPLAINANT & STATE:
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1. STATE OF KERALA, REP. BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. BHUVANACHANDRAN, S/O.THANKAPPAN PILLAI,
T.S. MANDIRAM, KOONAYIL, PARAVOOR P.O.,
KOLLAM REPRESENTED BY POWER OF ATTORNEY HOLDER
MOHANAKUMAR, S/O.DIVAKARAN ASAN,
G.D.MANDIRAM, KOONAYIL, PARAVOOR P.O.

PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 04/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

CRL.R.P.NO. 4111 OF 2006

Dated this the 4th day of December,2006

O R D E R

The petitioner was found guilty for the offence under Section 138 of the Negotiable Instruments Act and he was sentenced to undergo simple imprisonment for six months. He was also directed to pay a compensation of Rs.1,25,000/- under Section 357(3) of the Code of Criminal Procedure. The petitioner challenged the conviction and sentence in appeal. The Appellate Court confirmed the conviction and sentence and dismissed the appeal.

2. The case of the complainant is that a sum of Rs.1,25,000/- was borrowed by the accused on 23.3.1999 and in discharge of that debt the accused issued Ext.P2 cheque dated 8.4.1999. On presentation of the cheque, it was dishonoured on the ground of insufficiency of funds in the account

of the accused. Ext.P5 notice was sent to the accused, to which he sent a reply notice, marked as Ext.D1.

3. Before the trial court, PW1 was examined on behalf of the complainant, PW1 being his power of attorney holder, and Exts.P1 to P10 were marked. On behalf of the accused, DW1 was examined and Exts.D1 to D2(a) were marked.

4. PW1 stated that he had witnessed the transaction between the complainant and the accused. In the cross examination of PW1, a suggestion was made that the complainant and the accused were working in Saudi Arabia and Ext.P2 cheque was obtained by the complainant and it was misused by him. In the examination under Section 313 of the Code of Criminal Procedure, the accused stated that himself and the complainant were staying in adjacent rooms in Saudi Arabia and the

complainant had stolen away one cheque leaf belonging to the accused. The trial court noticed that the suggestion made to PW1 in cross examination and the case put forward under the 313 questioning was not stated in Ext.D1 reply notice. In Ext.D1 reply notice, there is a total denial and there is no specific case as to how the cheque happened to come in the possession of the complainant. The defence story was disbelieved by the trial court. The trial court had also drawn the presumption under Section 139 of the Negotiable Instruments Act and held, after considering the evidence on record, that the accused failed to rebut the presumption. The specimen signature of the accused was called from the bank and it was marked as Ext.P10. The trial court compared the signature of the accused in Ext.P10 and the signature found in Ext.P2 and held that there is no difference in the signatures in these two documents. The Ledger extract in respect of the

account of the accused was produced as Ext.P8 and the cheque returned register was marked as Ext.P9. Relying on Exts.P3, P4, P8 and P9, the trial court came to the conclusion that the complainant has succeeded in proving that there was no sufficient funds in the account of the accused at the time when the cheque was presented. There is no case for the accused that the ingredients of the proviso to Section 138 of the Negotiable Instruments Act have not been complied with or that the complaint was not presented within time as provided under Section 142 of the Act. The trial court, as stated earlier, imposed a sentence of simple imprisonment for six months. The Appellate Court concurred with the view taken by the trial court and dismissed the appeal. The Appellate Court held that it is proved in the case that PW1 was aware of the real transaction between the accused and the complainant. It was also noticed by the Appellate Court that in the cross examination of PW1, there

was no challenge to the signature contained in Ext.P1 power of attorney executed by the complainant in favour of PW1. The defence case was also disbelieved by the Appellate Court.

5. No grounds are made out to invoke the revisional jurisdiction of this Court under Section 397 of the Code of Criminal Procedure. There is no error, illegality or impropriety in the judgments of the courts below. However, in the facts and circumstances of the case, I am of the view that the sentence awarded is excessive and that imprisonment till the rising of the Court would be adequate and sufficient, particularly in view of the decision in **Anil Kumar** v. **Shammy** (2002 (3) KLT 852). Accordingly, the sentence of imprisonment for six months is reduced to imprisonment till rising of the Court. In the facts and circumstances of the case, I am also of the view that four months' time can be granted to

the petitioner to pay the compensation amount. Since no interference is being made in the conviction, I do not think that it is necessary to issue notice to the second respondent/complainant.

In the result, the Criminal Revision Petition is partly allowed in the manner indicated below:

1) The conviction of the petitioner under Section 138 of the Negotiable Instruments Act is confirmed.

2) Sentence of imprisonment for six months is modified and reduced to imprisonment till the rising of the Court.

3) The direction to pay compensation of Rs.1,25,000/- is confirmed. However, four months' time is granted to the petitioner to pay the compensation amount. In default of payment of compensation, the petitioner shall undergo simple imprisonment for three months.

4) The default sentence in default of payment of compensation shall be kept in abeyance for a period of four months.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

CRL.M.C.NO. OF

O R D E R

September, 2006